

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-005573

07/12/2006

forfeitures.” *Id.* The applicability of the statutes is a determination for the court to make, and is decided on a case-by-case basis. *See Hassenpflug v. Hart*, 89 Ariz. 235, 237 (1961) (holding that a defaulting purchaser was not entitled to the 30-day grace period technically mandated by the forfeiture statute as purchaser had failed to make a single payment toward the purchase price of the land); *see Brigham v. First Nat. Bank of Arizona*, 129 Ariz. 160, 163 (1981) (holding that the forfeiture statute did not operate to extend a grace period to a defaulting purchaser in a cash real estate contract when purchaser has paid 100% of cash purchase price). The forfeiture statute is more appropriately applied to situations where a plaintiff first brings action to enforce the provisions of the statute in response to a defendant failing to provide notice. *Maciborski v. Chase Service Corp. of Arizona*, 161 Ariz. 557, 558 (App., 1989) (holding that the forfeiture statute A.R.S. § 33-743 applied and that Defendant had properly recorded notice at least twenty days before forfeiture after Plaintiff breached an installment land sale contract).

The case at bar does not present a harsh and inequitable forfeiture that the forfeiture statutes were developed to protect against. As described in detail by the court in granting summary judgment for Defendant, Plaintiff resided within Defendant’s premise for an extended period of time while often failing to make any payments whatsoever towards the contract. The funds provided by Plaintiff amounted to nothing more than an extraordinarily fair rental term by which Plaintiff was able to reside in the premises for some 13 years.

Initially, Plaintiff proposed to this court that she had paid the entirety of the agreed upon sum required under the contract. She now advocates that she be given the opportunity to meet the terms of the contract after an extended period of litigation that concluded with Plaintiff being found in breach. *Foster* does not stand for the proposition that an opportunistic Plaintiff be given the automatic statutory ability to meet the terms of a contract for transfer of property after the court finds the Plaintiff in breach of the agreement. Such a situation fails to present the sort of harsh and inequitable circumstances by which a seller is unjustly enriched at the expense of the purchaser.

For the aforementioned reasons, Plaintiff is not entitled to the protection described under Arizona’s forfeiture statutes.

IT IS ORDERED denying Plaintiff’s motion for reconsideration.